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17 **UNITED STATES DISTRICT COURT**
18 **DISTRICT OF NEVADA**
19

20 Cung Le, Nathan Quarry, Jon Fitch, Brandon
21 Vera, Luis Javier Vazquez, and Kyle
Kingsbury on behalf of themselves and all
22 others similarly situated,

23 Plaintiffs,

24 v.

25 Zuffa, LLC, d/b/a Ultimate Fighting
Championship and UFC,

26 Defendant.
27
28

Case No.: 2:15-cv-01045-RFB-(PAL)

**ZUFFA, LLC'S MOTION TO SEAL
ZUFFA'S REPLY IN SUPPORT OF
ZUFFA'S MOTION FOR SUMMARY
JUDGMENT**

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INTRODUCTION

Zuffa, LLC (“Zuffa”) respectfully requests that the Court order the Clerk of Court to file under seal those documents conditionally lodged under seal as part of Zuffa’s Reply in Support of Zuffa’s Motion for Summary Judgment (“Reply”). Zuffa makes this request pursuant to the Stipulated Order governing the confidentiality of documents entered by the Court on February 10, 2016, ECF No. 217 (“Protective Order”).

Zuffa’s sealing requests are narrowly tailored and comport with the Ninth Circuit’s “compelling reasons” standard governing the sealing of documents attached to dispositive motions. Zuffa has worked diligently to narrow the scope of its sealing requests. Decl. of Stacey K. Grigsby in Supp. of Mot. to Seal Reply (“Grigsby Decl.”) ¶ 9.

LEGAL STANDARD

Documents filed in connection with a dispositive motion, including summary judgment, may be filed under seal if “compelling reasons” exist to seal those documents. *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). The Supreme Court has explained that the “right to inspect and copy judicial records is not absolute.” *Nixon v. Warner Comms.*, 435 U.S. 589, 598 (1978) (citations omitted). The “compelling reasons” standard requires a party to “articulate compelling reasons supported by specific factual findings that outweigh the general history of access and public policies favoring disclosure.” *Kamakana*, 447 F.3d at 1178-79 (citations and quotation marks omitted). In determining whether court materials should be sealed, “the court must ‘conscientiously balance[] the competing interests’ of the public and the party who seeks to keep certain judicial records secret.” *Id.* at 1179 (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)).

The “compelling reasons” standard requires a party to “articulate compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure.” *Kamakana*, 447 F.3d at 1179 (citations and quotation marks omitted). “Compelling reasons” have included preventing: disclosure of “sources of business information that might harm a litigant’s competitive standing,” *Nixon*, 435 U.S. at 598 (citations

omitted); the “release of trade secrets,” *Kamakana*, 447 F.3d at 1179 (citing *Nixon*, 435 U.S. at 598); and “the release of . . . information [that] would result in an invasion of the privacy interests of third parties.” *GoDaddy.com LLC v. RPost Comms. Ltd.*, No. CV-14-00126-PHX-JAT, 2016 WL 1158851, at *5 (D. Ariz. Mar. 24, 2016), *on reconsideration in part*, No. CV-14-00126-PHX-JAT, 2016 WL 1274120 (D. Ariz. Mar. 31, 2016).

The Ninth Circuit has held that certain “confidential and commercially sensitive information,” including licensing agreements containing “pricing terms, royalty rates, and guaranteed minimum payment terms,” meet the “compelling reasons” standard and are properly filed under seal. *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (“*Electronic Arts*”). The Ninth Circuit noted that these categories of information “plainly fall[] within the definition of ‘trade secrets’” and explained that “a trade secret may consist of any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.” *Id.* (citations and quotation marks omitted)

ARGUMENT

As described below, Zuffa seeks to seal various documents that meet the compelling reasons standard for sealing. The categories of documents Zuffa seeks to seal are described below in Table A¹:

¹ As the language in Zuffa’s Exhibit 113 is the same language as in Zuffa’s reply to the CSOF, the redacted portions of Exhibit 113 should be filed under seal for the same reasons as in Zuffa’s reply to Plaintiffs’ CSOF.

Table A: Exhibits Zuffa Seeks to File under Seal

Type of Material Zuffa Seeks to Seal	Exhibits or Portions of Zuffa's Reply
Documents or portions thereof describing or providing highly confidential and trade secret information on Zuffa's contractual clauses and the trade secret internal policies relating to those contractual clauses. Disclosure of this trade secret information would be very likely to cause significant competitive harm to Zuffa.	Ex. 115, Excerpt of 7/14/17 Mersch Dep., 322:9-18, 323:1-13, 324:16-19, 325:10-328:3 Ex. 116, Excerpt of 5/26/17 Epstein Dep., 90:11-20, 91:12-17, 93:1-2, 93:5-12, 93:17-18 Ex. 122, Excerpt of Pls.' First Am. Interrogatory Resp., 6-7 Ex. 130, Excerpt of 7/14/17 Mersch Dep., 358:1-8 Ex. 132, Excerpt of 3/23/17 Fertitta Dep., 169:12-16, 169:24-25 Reply 21, CSOF Responses ¶¶ 8, 11-12, and corresponding responses in Ex. 113.
Documents or portions thereof describing or providing event-level financial information or highly confidential internal valuation or analysis, information or derived from or quoting from such information, such that trade secret information would be revealed if filed publicly and significant competitive harm would likely result.	Ex. 119, RAINE000019, Deck on Zuffa's Business in Brazil Ex.125, Excerpt of 9/27/17 Singer Dep., 269:20, 270:14, 270:19, 270:22-24, 271:20-22, 293:8-9, 294:19, 295:2-3 Ex. 129, Excerpt of 12/2/16 Acquisitions 30(b)(6) Dep., 82:1-83:1, 150:8-12, 150:15-20 Reply 18.

Table A: Exhibits Zuffa Seeks to File under Seal

Type of Material Zuffa Seeks to Seal	Exhibits or Portions of Zuffa's Reply
Documents or portions thereof describing or providing detailed information on trade secret business information and highly sensitive internal strategy information, disclosure of which would be very likely to result in unjustified competitive harm.	Ex. 119, RAINE000019, Deck on Zuffa's Business in Brazil Ex.125, Excerpt of 9/27/17 Singer Dep., 269:20, 270:14, 270:19, 270:22-24, 271:20-22, 293:8-9, 294:19, 295:2-3 Ex. 129, Excerpt of 12/2/16 Acquisitions 30(b)(6) Dep., 83:22-85:4, 85:14-25, 148:5-149:18, 151:15-19 Ex. 130, Excerpt of 7/14/17 Mersch Dep., 362:17-363:7, 636:14-365:24 Ex. 132, Excerpt of 3/23/17 Fertitta Dep., 163:19-25 Reply CSOF Responses ¶¶ 11-12, 14-18, 19 and corresponding responses in Ex. 113.
Documents or portions thereof describing or providing information designated highly confidential by a third-party, containing third party trade secrets and/or private third-party information, disclosure of which would be very likely to cause significant commercial harm or personal invasion of privacy. These types of documents often include highly sensitive third-party financial information, disclosure of which would be likely to cause competitive harm.	Ex. 116, Excerpt of 5/26/17 Epstein Dep., 90:11-20, 91:12-17, 92:20-21, 92:24, 93:1-2, 93:5-12, 93:17-22 Ex. 118, Excerpt of 8/8/17 Neville Dep. 88:2-22, 89:13-20, 90:8-14, 92:18-93:2 Ex. 119, RAINE000019, Deck on Zuffa's Business in Brazil Ex. 130, Excerpt of 7/14/17 Mersch Dep., 358:1-8, 490:1-2 Ex. 132, Excerpt of 3/23/17 Fertitta Dep., 167:3, 168:25 Reply 21, CSOF Response ¶ 10, and corresponding responses in Ex. 113.

I. Zuffa's Highly Confidential And Commercially Sensitive Information Regarding Agreements With Athletes Is Properly Filed Under Seal.

Zuffa's promotional and other athlete agreements contain "specific contractual terms, financial payments, benefits and obligations negotiated with an athlete." ECF No. 349-1 ¶ 8 (Decl. of Nicholas A. Widnell ("Widnell Decl.")). Zuffa's executives and employees keep this contractual and financial information, which includes individual compensation information, private and confidential. ECF No. 565-3 (Decl. of Wm. Hunter Campbell ("Campbell Decl.")). ¶ 3. Zuffa works diligently to keep its promotional agreements and athlete contracts—both executed and in draft form—confidential. *Id.* ¶ 6. Zuffa does this *inter alia* to prevent its competitors from simply copying its contracts or combining that information with other highly

1 confidential financial information to copy or undermine Zuffa's successful business model. *Id.*

2 A. The Ninth Circuit And Several District Courts, Including This Court, Have Held That
3 Sealing This Type Of Information Is Appropriate Under the "Compelling Reasons"
4 Standard.

5 The Ninth Circuit has held that this type of information is properly filed under seal. *E.g.*,
6 *Elec. Arts*, 298 F. App'x at 569 (compelling reasons justify sealing categories of information
7 including pricing terms, royalty rates, guaranteed minimum payment terms, trade secret
8 information, and business information that, if released, might cause competitive harm). The
9 Ninth Circuit has adopted the Restatement of Torts definition of "trade secret" as "any formula,
10 pattern, device or compilation of information which is used in one's business, and which gives
11 him an opportunity to obtain an advantage over competitors who do not know or use it." *Clark v.*
12 *Bunker*, 453 F.2d 1006, 1008-09 (9th Cir. 1972) (finding that a "detailed plan for the creation,
13 promotion, financing and sale of contracts" constitutes a trade secret); *see also Elec. Arts*, 298 F.
14 App'x at 569. District courts within this District and Circuit have explained that "[w]here the
15 material includes information about proprietary business operations, a company's business model
16 or agreements with clients, there are compelling reasons to seal the material because possible
17 infringement of trade secrets outweighs the general public interest in understanding the judicial
18 process." *Selling Source, LLC v. Red River Ventures, LLC*, No. 2:09-cv-01491-JCM-GWF,
19 2011 WL 1630338, at *6 (D. Nev. Apr. 29, 2011); *see also In re ConAgra Foods, Inc.*, No. CV
20 11-05379-MMM (AGRx), 2014 WL 12577133, at *4 (C.D. Cal. Dec. 29, 2014) (citing cases)
21 ("Courts routinely find that the risk of competitive harm arising from the public disclosure of
22 internal business documents constitutes a compelling reason that justifies sealing").

23 Agreements, including agreements that contain specific information regarding how a party
24 engages the services of a third party, are properly filed under seal under the "compelling reasons"
25 standard as "competitors could use this information to adjust their own contracts," thereby
26 undermining a party's "ability to compete." *Stout v. Hartford Life & Acc. Ins. Co.*, No. CV 11-
27 6186 CW, 2012 WL 6025770, at *2 (N.D. Cal. Dec. 4, 2012) (citations omitted). Zuffa's
28 agreements with athletes meet the "compelling reasons" standard because as intense negotiations

frequently take place for MMA athlete services between Zuffa and its competitors, Campbell Decl. ¶ 5, “disclosing the terms of these agreements would put [Zuffa] at a disadvantage in future negotiations for similar agreements.” *Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, No. 12-CV-03844-JST, 2015 WL 984121, at *3 (N.D. Cal. Mar. 4, 2015).

B. Zuffa Has Provided Evidence Demonstrating That Athlete Contractual Information Is Highly Sensitive And Disclosure Of That Information Would Cause Zuffa Significant Competitive Harm.

Disclosure of Zuffa’s promotional agreements, which contain specific financial terms, benefits, and obligations negotiated with an athlete, would “provide competitors with unfair and damaging insights into Zuffa’s business practices.” Campbell Decl. ¶¶ 3, 5-6 (disclosure of “the amounts and benefits Zuffa is willing to offer an athlete – in addition to information regarding Zuffa’s negotiation strategy and tactics – could and would be used by competitors to gain an advantage in negotiations with such athletes”).

There is no dispute that other MMA promoters are aware of the significant competitive risks and harms they face if their confidential athlete agreements were released publicly. For example, Bellator’s President and outside counsel both have described the competitive harm that would befall Bellator if athlete contract information was released publicly to this Court. According to Bellator’s President, “if individual athlete contract information were provided to Bellator’s competitors, they would be able to anticipate Bellator’s recruitment strategies, outflanking its ability to sign the best fighters, anticipating strategies in each respective weight class and geographic market, and compromising its strategic plans to develop the best overall promotion.” *Le v. Zuffa*, 17-cv-00849-RFB-PAL, ECF No. 1-3 (Decl. of Bellator President Scott Coker at ¶ 15) (“Coker Decl.”). Bellator’s counsel has explained to this Court that any information—*e.g.*, individual athlete contracts—that would permit a “Bellator fighter [to be] compared to this fighter, they’re disclosing our information,” which he characterized as “a very significant concern.” ECF No. 438, June 1, 2017 Hearing Tr. 16:16-21.

C. Disclosure of Athlete Contracts Would Invade The Privacy Interests Of Third Parties And Potentially Harm Athletes' Interests.

Zuffa's agreements with athletes—and, in particular, any draft contracts and negotiation communications—also meet the “compelling reasons” standard because the other parties to the contract have a privacy interest in maintaining the confidentiality of their contracts and negotiations. *Icon-IP Pty Ltd.*, 2015 WL 984121, at *3 (granting a motion to seal regarding invoice and payment information in addition to “information about assignments and consulting and license agreements between a third party consultant” under the “compelling reasons” standard because “release of that information would result in an invasion of the third party’s privacy” and “would result in an invasion of the privacy of the third party consultants” at issue).

Indeed, many athletes do not want the terms of their contracts to be publicly released and for some, release of that information—in particular compensation information—would threaten the safety of the athletes and their families. ECF No. 589-1, Decl. of Ali Abdelaziz ¶¶ 4-5. “The privacy interests of innocent third parties should weigh heavily in a court’s balancing opinion” of access to judicial records. *United States v. Amodeo*, 71 F.3d 1044, 1050 (2d Cir. 1995) (citation and quotation marks omitted). Zuffa employees have also received requests from athletes to keep their draft and final contracts—in addition to compensation information—strictly confidential for privacy or safety reasons. Campbell Decl. ¶ 8. Consistent with athlete commission rules and applicable laws, Zuffa employees use their best efforts to respect these requests. *Id.*

D. Courts Have Already Held That Athlete Contracts Are Properly Filed Under Seal Under The Compelling Reasons Standard.

This Court has already held that Zuffa's contracts with athletes and other related business documents that contain financial terms meet the compelling reasons standard for sealing. ECF Nos. 495, 504. In addition, in another case in this District, Magistrate Judge Hoffman found that one of Zuffa's athlete agreements was properly filed under seal under *Kamakana*'s “compelling reasons” standard. *Hunt v. Zuffa, LLC*, Case No. 2:17-cv-00085-JAD-CWH (D. Nev. Aug. 20, 2018), ECF No. 140 at 1-2. In granting Zuffa's request, Judge Hoffman noted Zuffa's claim that “the agreements contain proprietary information, and that public disclosure would harm Zuffa's

1 contractual relationships with other fighters and its competitive standing with MMA promoters.”

2 *Id.* at 2. Judge Hoffman concluded that Zuffa has “identified compelling reasons that warrant
3 sealing” the agreements and a related portion of a brief. *Id.*

4 E. Each Document or Portion Thereof Zuffa Seeks to Seal Under This Compelling
5 Reason Contains Highly Confidential Information Regarding Zuffa’s Contracts With
6 Athletes

7 Zuffa seeks to seal portions of several documents which contain highly confidential
8 information related to its contracts with athletes:

9 Exhibit 115, an excerpt from the July 14, 2017 deposition of Michael Mersch, contains
10 highly confidential contractual information at lines 322:9-18, 323:1-13, 324:16-19, 325:10-328:3.
11 These lines contain a detailed discussion Zuffa’s contract provisions, including the way a specific
12 Zuffa contractual provision operates and Zuffa’s strategies in negotiating and re-negotiating
13 contracts with its athletes. Disclosure of this highly confidential business strategy information
14 would provide competitors with unfair and damaging insights into Zuffa’s highly confidential
15 contracts and business practices. Competitors could thereby cause harm to Zuffa, including by
16 way of competitors using knowledge of the highly confidential contractual language and Zuffa’s
17 legal and business strategies to gain an unfair advantage in negotiations with Zuffa athletes.

18 Exhibit 116, an excerpt of the May 26, 2017 deposition of Ike Lawrence Epstein contains
19 highly confidential contractual information at lines 90:11-90:25, 91:10-91:18, and 92:18-93:13.
20 These lines contain language from several highly confidential Zuffa contract provisions.
21 Disclosure of this information would likely cause Zuffa harm for the reasons listed in the
22 discussion of Exhibit 115 above.

23 Exhibit 122, an excerpt of Plaintiffs’ First Amended Interrogatory Responses, contains
24 highly confidential information related to Zuffa’s contracts with its athletes on pages 6 and 7.
25 These pages contain a detailed description of one of Zuffa’s highly confidential contractual
26 provisions and Zuffa’s strategic view regarding the provision. In addition, page 6 of the Exhibit
27 also contains an internal analysis of the length of Zuffa’s highly confidential contracts.
28

1 Disclosure of this information would likely cause Zuffa harm for the reasons listed in the
2 discussion of Exhibit 115 above.

3 Exhibit 130 is an excerpt from the July 14, 2017 deposition of Michael Mersch. Lines
4 358:1-8 of the Exhibit contain language from and a description of a highly confidential
5 negotiation between Zuffa and an athlete. Zuffa's negotiation communications with athletes,
6 including the communications in this Exhibit, meets the "compelling reasons" standard for
7 sealing because as intense negotiations frequently take place for MMA athlete services between
8 Zuffa and its competitors, *e.g.* Bellator and others, "disclosing the terms of these agreements
9 would put [Zuffa] at a disadvantage in future negotiations for similar agreements." *Icon-IP Pty*
10 *Ltd.*, 2015 WL 984121, at *3.

11 Exhibit 132 is an excerpt from the March 23, 2017 deposition of Lorenzo Fertitta. Lines
12 169:12-16, and 169:24-25 of the exhibit contain highly confidential information related to Zuffa's
13 contracts with its athletes. Specifically, these lines discuss Zuffa's contract renegotiation practices
14 and an individual fighter's desire to sign an extension on his contract. Disclosure of this
15 information would likely cause Zuffa harm for the reasons listed in the discussion of Exhibit 115
16 above.

17 Page 21 of the Reply (addressing CSOF ¶ 8(c)) and Zuffa's responses to paragraphs 8, 11,
18 and 12 of Plaintiffs' CSOF contain information regarding highly sensitive and confidential
19 information about Zuffa's contractual clauses (¶¶ 8, 11-12) and Zuffa's negotiation with an
20 athlete (¶¶ 11-12). For the reasons stated above as to Exhibits 115-116, 122, 130 and 132, in
21 addition to Zuffa's motion to seal filings regarding Plaintiffs' Opposition to Zuffa's Motion for
22 Summary Judgment, ECF Nos. 602 and 609, these portions of Zuffa's Reply are properly filed
23 under seal. For these same reasons, the corresponding responses in Exhibit 113 are properly filed
24 under seal.

25 II. Documents Containing Detailed Analysis Of Zuffa's Financial And Revenue
26 Information Are Properly Filed Under Seal.

27 Zuffa moves to seal the exhibits and portions of its Reply that contain detailed analysis of
28 Zuffa financial and revenue information, including individual athlete and event-level information,

1 as well as Zuffa's confidential financial records, revenue, internal valuations, and compensation.
2 This Court has previously sealed Zuffa's financial information under the "compelling reasons"
3 standard. ECF No. 495, 504.

4 Zuffa is a privately owned corporation. It does not publicly report its revenue, expense,
5 compensation, and other financial information on a yearly, quarterly, or event-by-event basis.
6 ECF No. 565-3, Campbell Decl. ¶ 4. Zuffa, its executives, and its employees maintain the
7 confidentiality of its financial and revenue information—including revenue and compensation
8 information, both on an individual and aggregate level—private and confidential. *Id.* ¶ 3. Zuffa
9 considers its event-level financial information, including compensation and spending information,
10 highly confidential. *Id.*

11 Zuffa's financial information is highly sensitive, and releasing this information publicly
12 would put Zuffa at risk of competitive harm because other MMA promoters would be likely to try
13 to use Zuffa's confidential financial information to their advantage. *Id.* ¶ 3 (explaining that
14 release of this "highly sensitive business information" would permit "competitors to have a
15 tactical advantage over Zuffa in negotiations with venues, sponsors, athletes, and others");
16 Grigsby Decl. ¶ 5. Other courts in this district have also held that compelling reasons exist to seal
17 these types of information. *Selling Source, LLC v. Red River Ventures, LLC*, No. 2:09-cv-
18 01491-JCM-GWF, 2011 WL 1630338, at *6-7 (D. Nev. Apr. 29, 2011) (finding compelling
19 reasons to seal "detailed information regarding Selling Source's business operations, customer
20 agreements, corporate structure, the details of Selling Source's customer base and how the
21 company works with and licenses products to its customers and measures it takes to protect its
22 intellectual property," including the "Master Service Agreement" and "License Agreement");
23 *Bartech Int'l, Inc. v. Mobile Simple Sols., Inc.*, No. 2:15-cv-02422-MMD-NJK, 2016 WL
24 2593920, at *3 (D. Nev. May 5, 2016) (finding compelling reasons to seal "account list" that
25 "evidences the terms of numerous agreements, reveals revenue figures, and lists technical
26 information regarding each contract," as well as "business plan created by Plaintiff for a specific
27 client"); *J.M. Woodworth Risk Retention Grp., Inc. v. Uni-Ter Underwriting Mgmt. Corp.*, No.
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2:13-cv-00911-JAD-PAL, 2014 WL 12769806, at *1–2 (D. Nev. May 20, 2014) (finding compelling reasons to seal documents “that contain proprietary and confidential information about the corporate structure and internal governance of Plaintiff’s business”) (Leen, J.).

Zuffa is not the only MMA promoter with this concern. That Bellator designated all of its quarterly financial data as highly confidential—the most protected designation—under the Protective order only underscores the sensitivity of this type of information. As counsel for Bellator explained, event-level specific financial documents are among the “most sensitive documents” to Bellator. ECF No. 438, June 1, 2017 Hearing Tr. 39:11-15 (describing event-level profit-and-loss statements for individual fights (or bouts) as “the most sensitive documents”).

The Federal Circuit, applying Ninth Circuit law, has held that “detailed product-specific financial information” may be properly filed under seal where a company “could suffer competitive harm if [the] information is made public,” including providing “suppliers an advantage in contract negotiations” which would put the company “at a competitive disadvantage compared to their current position.” *Apple Inc. v. Samsung Elecs. Co.*, 727 F.3d 1214, 1225 (Fed. Cir. 2013). “[D]etailed product-specific” information properly filed under seal includes “costs, sales, profits, and profit margins.” *Id.* at 1224-25. The Federal Circuit further held that reports with “information that [a company’s] competitors could not obtain anywhere else,” even where those competitors could attempt to replicate that information, meet the compelling reasons standard for sealing. *Id.* at 1228.

Zuffa’s detailed financial information is properly filed under seal. This includes Zuffa’s wage share information—detailed event-by-event information comparing Zuffa’s event revenue to the amount of compensation paid to athletes competing in that event. Wage share information is properly sealed because it is a compilation of information regarding Zuffa’s “volume of business” and highly confidential trends (and sales) in Zuffa’s business. *Del Campo v. Am. Corrective Counseling Servs., Inc.*, No. C-01-21151 JW (PVT), 2007 WL 902568, at *5 (N.D. Cal. Mar. 22, 2007) (citing *Walker v. University Books, Inc.*, 602 F.2d 859, 865 n.2 (9th Cir. 1979)). As Zuffa has previously explained at length, detailed wage share information—whether

1 used on its own or in conjunction with regression analysis—would provide competitors with
 2 unearned insights into Zuffa’s investment, expense, and spending decisions, permitting them to
 3 have a “roadmap” to Zuffa’s business and allow those competitors to cause competitive harm to
 4 Zuffa for their benefit. Zuffa’s Reply in Supp. of Mot. to Seal Pls.’ Class Cert Reply, ECF No.
 5 565 at 5-6.

6 In addition, it is the *combined effect* of the disclosure of detailed financial information that
 7 is important in evaluating whether sealing under the “compelling reasons” standard is
 8 appropriate.² *Del Campo* and the Ninth Circuit *Walker* decision hold that if competitors could
 9 successfully use the various pieces of a business’s proprietary information to more effectively
 10 compete, then that information may constitute a trade secret. Further, in *Apple*, the Federal
 11 Circuit considered the *combined* effect of disclosing separate pieces of business information. *Id.*
 12 at 1225 (“If Apple’s and Samsung’s suppliers have access to their profit, cost, and margin data, it
 13 could give the suppliers an advantage in contract negotiations, which they could use to extract
 14 price increases for components. This would put Apple and Samsung at a competitive
 15 disadvantage compared to their current position”) (internal citation omitted). In sum, sealing
 16 under the “compelling reasons” standard is appropriate for Zuffa’s financial, revenue, and related
 17 information.

18 The exhibits listed below, which contain highly confidential financial information, are
 19 properly filed under seal:

20 Exhibit 125, an excerpt of the September 27, 2017 deposition of Dr. Hal J. Singer,
 21 contains highly confidential financial information at lines 269:20, 270:14, 270:19, 270:22-24,
 22 271:20-22, 293:8-9, 294:19, 295:2-3. These lines reference specific Zuffa financial information,
 23 including compensation and revenue information—expressed as wage share—and information
 24 derived from specific compensation and revenue information. This type of information is
 25 properly filed under seal because of the “proprietary nature of confidential financial information”

26 ² In granting a motion to seal trade secret information, the *Del Campo* court recognized that
 27 binding precedent holds that “one factor in determining whether information is a trade secret is
 28 the ease or difficulty with which the information could be properly acquired or duplicated by
 others.” 2007 WL 902568, at *5 (citing *Walker*, 602 F.2d at 856 n.2).

1 and the fact that “past information may be used to predict future business plans” such that a
 2 private company’s financial information is properly filed under seal under the “compelling
 3 reasons” standard. *Nat’l Prod., Inc. v. Aqua Box Prod., LLC*, No. C12-605 RSM, 2013 WL
 4 12106901, at *1 (W.D. Wash. Mar. 25, 2013) (citing *Microsoft Corp. v. Motorola, Inc.*, No. 10-
 5 1823, 2012 WL 5476846, at *4 (W.D. Wash. Nov. 12, 2012)). This includes, for example,
 6 “monthly sales figures,” which are properly sealed for a “private company” that keeps its
 7 financial information “strictly private in order to preserve its competitive position with sellers of
 8 similar products.” *Id.* Public disclosure of the amount Zuffa spends on and takes in as revenue
 9 from events—as well as trends over time—would provide Zuffa’s competitors with insights on
 10 how Zuffa strategically decides to allocate its spending per event, the returns to that spending, and
 11 Zuffa’s revenue allocation strategies over time. As a private company, this is proprietary
 12 financial information that could provide competitors with unfair and unearned competitive
 13 advantages. This information is also properly sealed under the “compelling reasons” standard as
 14 trade secret business information and highly sensitive internal strategy information, disclosure of
 15 which would be very likely to result in unjustified competitive harm.

16 Exhibit 119, a January 2013 third party document that was marked “Highly Confidential”
 17 by third party The Raine Group LLC, is properly filed under seal as to the slide appearing at
 18 RAINE0000023, which is a highly confidential analysis of Zuffa’s trade secret information
 19 concerning a potential business venture in Brazil. Disclosure of this information would likely
 20 cause Zuffa harm for the reasons listed in the discussion of Exhibit 125 immediately above.

21 Exhibit 129 is an excerpt of the December 2, 2016 Acquisitions 30(b)(6) deposition.
 22 Lines 82:1-83:1 describe the financial terms of a confidential contract between Zuffa and another
 23 entity in addition to the allocation of funds pursuant to that agreement. Disclosure of this
 24 information, which provides insights into Zuffa’s business judgment and its strategic choices on
 25 spending and other information, could provide competitors with an unearned strategic advantage
 26 in negotiations with Zuffa and the ability to emulate Zuffa’s business practices. Lines 150:8-12
 27 and 150:15-20 provide detailed information on Zuffa’s valuation decisions and confidential
 28

1 financial information, disclosure of which could provide Zuffa's competitors with a strategic
2 advantage in negotiations with—and against—Zuffa.

3 The redaction on page 18 contains highly sensitive trade secret financial information
4 regarding Zuffa's contracts and its highly confidential strategy regarding negotiations and
5 contract renewal. This information is properly filed under seal for the reasons listed above as to
6 Exhibits 119, 125 and 129.

7 III. Zuffa's Trade Secret Business Information And Highly Confidential Business
8 Communications And Strategy Are Properly Filed Under Seal.

9 Zuffa moves to seal the exhibits and portions of its Reply that contain trade secret
10 business information and highly confidential and sensitive business communications strategy.
11 This information includes Zuffa's highly confidential marketing and business strategy related to
12 Zuffa's business in the United States and abroad. It also includes contract, payment and
13 negotiation strategies relating to Zuffa and non-Zuffa MMA athletes, as well as other business
14 partners that Zuffa works diligently to keep confidential. Campbell Decl. ¶¶ 5, 7.

15 This information is highly sensitive for Zuffa, as public disclosure of this information
16 would be likely to provide competitors with unfair and damaging insights into Zuffa's business
17 practices, including providing those competitors with unearned competitive advantages. *Id.* ¶¶ 5,
18 7. Compelling reasons exist to seal the exhibits and portions of Zuffa's Reply containing trade
19 secret business information. Grigsby Decl. ¶ 7; *see also id.* ¶¶ 5-6.

20 This type of trade secret business strategy information is properly filed under seal under
21 the compelling reasons standard. *See, e.g., Elec. Arts*, 298 F. App'x at 569 (compelling reasons
22 exist to seal categories of information including trade secret and business information that, if
23 released, might cause competitive harm); *Selling Source*, 2011 WL 1630338, at *6-7 (finding
24 compelling reasons to seal "detailed information regarding Selling Source's business operations,"
25 in addition to "the details of Selling Source's customer base and how the company works with
26 and licenses products to its customers and measures it takes to protect its intellectual property");
27 *Bartech Int'l, Inc.*, 2016 WL 2593920, at *3 (finding compelling reasons to seal the "business
28 plan created by Plaintiff for a specific client"). The Federal Circuit, applying Ninth Circuit law,

1 has held compelling reasons exist to seal data and information that competitors “could not obtain
2 anywhere else,” including, for example, marketing survey information that could give a company
3 a “competitive advantage” by permitting that company to be the first to “introduce products with
4 new features.” *Apple*, 727 F.3d at 1128. Release of this type of information could provide, as the
5 Federal Circuit explained, a “head-start” on the company’s strategy and would therefore “provide
6 them with an enormous benefit” to the company’s detriment. *Id.*

7 Zuffa seeks to seal portions of the exhibits listed below that contain the type of trade
8 secret business information described above:

9 Exhibit 119, a January 2013 third party document that was marked “Highly Confidential”
10 by third party The Raine Group LLC, is properly filed under seal as to the slide appearing at
11 RAINE0000023, which contains Zuffa’s highly confidential trade secret information regarding a
12 potential strategy, with detailed financial analysis and strategy, for a business venture in Brazil.
13 Disclosure of this information would likely cause Zuffa harm because it would, among other
14 things, provide Zuffa’s competitors with an unearned advantage in the marketplace regarding
15 Zuffa’s highly confidential business strategies regarding new business ventures and the ways in
16 which it, as a private company, structures and analyzes new business ventures.

17 Exhibit 125, an excerpt of the September 27, 2017 deposition of Dr. Hal J. Singer,
18 contains highly confidential trade secret information at lines 269:20, 270:14, 270:19, 270:22-24,
19 271:20-22, 293:8-9, 294:19, 295:2-3 as described above. *Supra* § II.

20 Exhibit 129 is an excerpt of the December 2, 2016 Acquisitions 30(b)(6) deposition.
21 Lines 83:22-85:4 and 85:14-25 are direct quotations from and a detailed discussion of a highly
22 confidential Zuffa document that provides highly sensitive trade secret, valuation, and strategy
23 information regarding an acquisition. Lines 148:5-149:18 are a discussion of a highly
24 confidential draft settlement agreement in addition to a discussion of Zuffa’s strategy and
25 evaluation of the value of a particular settlement. Lines 151:15-19 are a highly confidential
26 discussion of Zuffa’s strategy regarding athlete evaluation and future business strategies. Public
27 disclosure of this information would likely provide Zuffa’s competitors with an unearned
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1 competitive advantage regarding Zuffa's internal strategies regarding athlete evaluation and
 2 negotiations. Public disclosure of this information would also be likely to provide Zuffa's
 3 competitors—and others who do business with Zuffa—with strategic information regarding
 4 Zuffa's evaluation of disputes and proposed settlements.

5 Exhibit 130 is an excerpt from the deposition of Michael Mersch taken on July 14, 2017.
 6 The Exhibit contains, on lines 362:17-363:7 and 363:14-365:24, a highly confidential internal
 7 discussion regarding a strategic evaluation and discussion of whether to re-sign a Zuffa athlete
 8 and related information regarding how to structure a Zuffa event. Public disclosure of this
 9 information would likely provide Zuffa's competitors with an unearned competitive advantage
 10 regarding Zuffa's internal evaluation and strategies regarding athlete evaluation and negotiations.

11 Exhibit 132 is an excerpt from the March 23, 2017 deposition of Lorenzo Fertitta. This
 12 Exhibit contains information on Zuffa's highly confidential internal business practices and
 13 strategies at lines 163:19-25. Public disclosure of this confidential business strategy would likely
 14 cause Zuffa harms for the same reasons listed above in the discussions of Exhibits 129 and 130.

15 Zuffa's responses to paragraphs 11-12, 14-18, and 19 of Plaintiffs' CSOF contain highly
 16 confidential trade secret and strategy information that is properly filed under seal. These
 17 paragraphs contain information regarding Zuffa's confidential negotiating strategies (§§ 11-12),
 18 Zuffa's strategies regarding acquisitions and its related negotiation and evaluation strategies (§§
 19 14-18), and its negotiations and strategies regarding discussions with an athlete (§ 19). For the
 20 reasons stated above as to Exhibits 119, 125, 129, 130, and 132 in addition to Zuffa's motion to
 21 seal filings regarding Plaintiffs' Opposition to Zuffa's Motion for Summary Judgment, ECF Nos.
 22 602 and 609, these portions of Zuffa's Reply are properly filed under seal. The corresponding
 23 responses in Exhibit 113 are properly filed under seal for the same reasons.

24 IV. Information Designated Confidential By A Third Party And Exhibits Containing Third
Party Trade Secret And Similar Information Are Properly Filed Under Seal.

25 Zuffa seeks to file under seal certain exhibits designated as confidential by a Third Party
 26 that contain highly sensitive and confidential information and that would be likely to cause
 27 significant competitive harm if released publicly. These exhibits include third-party contracts and
 28

1 testimony that includes highly confidential information about third party contracts,
2 communications, or financial terms. Zuffa also seeks to seal exhibits containing redactions of
3 private personal information. Compelling reasons exist to seal information from the documents
4 listed below.

5 Exhibit 116, an excerpt of the deposition of Ike Lawrence Epstein contains highly
6 confidential contractual information at lines 90:11-90:25, 91:10-91:18, and 92:18-93:13. This
7 information comes from an October 2009 “Confidential Information Memorandum” created by
8 third party Deutsche Bank. In addition to containing the highly confidential contractual
9 information referenced above, the Confidential Information Memorandum is a confidential
10 document created by a third party.

11 Exhibit 118 is an excerpt of the 30(b)(6) deposition of Colin Neville, the designated
12 witness for third party The Raine Group, LLC, taken on August 8, 2017. Lines 88:2-22, 89:13-20,
13 90:8-14, and 92:18-93:2 of the deposition contain references to and descriptions of a highly
14 confidential document prepared by two third parties to this lawsuit, The Raine Group, LLC and
15 another party. The document and description of the document are properly filed under seal
16 because it contains the confidential information of a third party that was provided to third party
17 Raine group as part of a confidential offering and subject to a non-disclosure agreement. The
18 privacy and confidentiality interests of each non-party are sufficient to permit these limited
19 redactions under the “compelling reasons” standard.

20 Exhibit 119 is a document that has been designated highly confidential as all pages in the
21 exhibit by third party The Raine Group, LLC. As noted above, the slide appearing on page
22 RAINE0000023 is independently properly filed under seal because it contains highly sensitive
23 Zuffa financial information. Zuffa seeks to lodge the remainder of the document under seal on
24 the basis that a third party has marked the document highly confidential.

25 Exhibit 130 is an excerpt of the July 14, 2017 deposition of Michael Mersch. Lines
26 490:1-2 contain completely irrelevant information pertaining only to Mr. Mersch including his
27 work address and the structure and nature of his current work. Public release of this information
28

1 would serve no purpose other than to needlessly invade Mr. Mersch's privacy and, because the
 2 information is irrelevant to this lawsuit, would provide no public benefit. It is properly sealed
 3 under the "compelling reasons" standard.

4 Exhibit 132 is an excerpt of the March 23, 2017 deposition of Lorenzo Fertitta. This
 5 Exhibit contains the personal phone numbers of third parties to this lawsuit, Lorenzo Fertitta and
 6 Audie Attar, at lines 167:3 and 168:25. As discussed above in relation to Mr. Mersch's personal
 7 information, disclosure of this information would invade the privacy of Mr. Fertitta and Mr. Attar
 8 while providing no public benefit and is therefore properly sealed.

9 The highly confidential information about third party contractual clauses contained in
 10 page 21 (addressing CSOF ¶ 10) and Zuffa's response to paragraph 10 of Plaintiffs' CSOF are
 11 properly filed under seal because the information, as stated above, if released publicly, is likely to
 12 cause significant competitive harm to those MMA competitors. For the same reasons, Exhibit
 13 113 is properly filed under seal as to Zuffa's response to paragraph 10 of Plaintiffs' CSOF.

14 V. Zuffa Has Narrowly Tailored Its Sealing Requests.

15 Counsel for Zuffa has carefully reviewed its Reply and every exhibit to the Reply in an
 16 effort to narrowly tailor its sealing requests. As a result of its review, Zuffa has determined that
 17 all but the exhibits listed above to its Reply may be filed publicly in their entirety. Grigsby Decl.
 18 ¶ 9. Zuffa seeks only to seal limited portions of the Reply and associated exhibits listed above.

19 **CONCLUSION**

20 For the foregoing reasons, Zuffa respectfully requests that the Court find that compelling
 21 reasons exist to seal the exhibits described herein and the portions of Zuffa's Reply reflecting the
 22 contents of such exhibits.

1 Dated: November 2, 2018

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Zuffa, LLC's Motion to Seal Zuffa's Reply in Support of Zuffa's Motion for Summary Judgment was served on November 2, 2018 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ Roderick J. Crawford

Roderick J. Crawford, an Employee of
Boies Schiller Flexner LLP